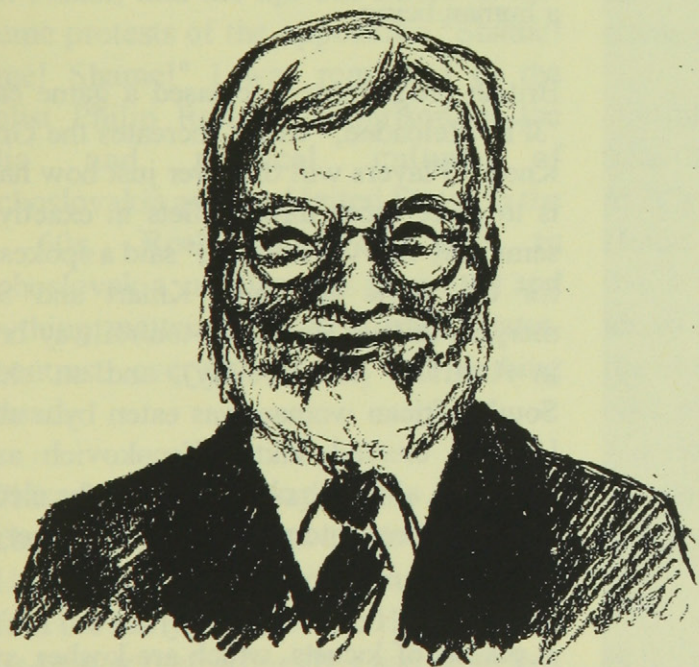


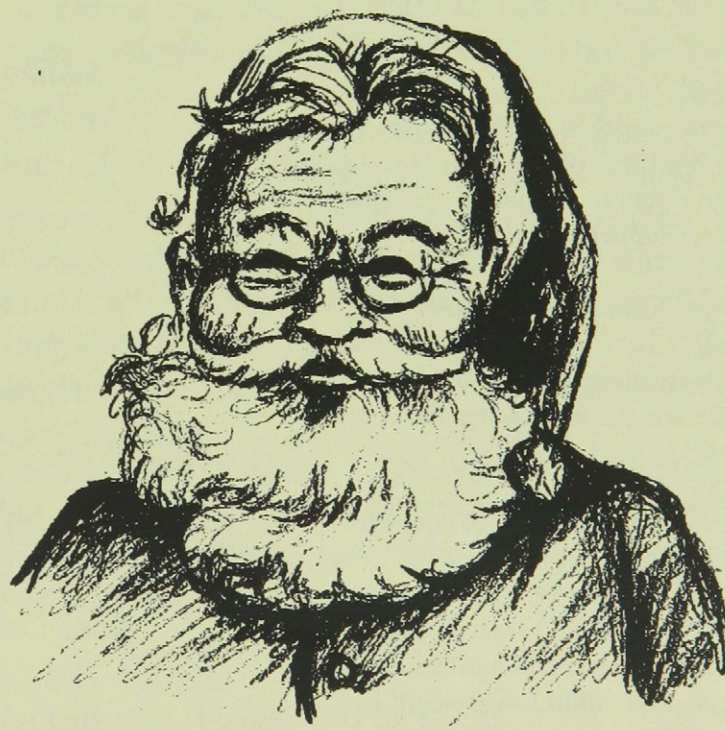
# Quid Novi

McGill University, Faculty of Law  
Volume 25, no. 13 - December 1, 2004

## NEWS ITEM : Prof. Glenn's Secret Identity Finally Revealed!



"HE HE HE!"



"HO HO HO!"

CB2004



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### QUID NOVI

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## Week in Review...

The United States Congress passed a \$388 billion spending bill. The bill had \$15.8 billion worth of "extras," including \$25,000 for the study of mariachi music, \$236,000 for blueberry research, and \$2 million to buy back the presidential yacht, sold by Jimmy Carter in 1977. The yacht, the U.S.S. Sequoia, currently rents for \$2,500 an hour. The bill also allows hospitals and HMOs to refuse to provide abortions, and gave two committee chairmen and their assistants access to income tax returns, without regard to privacy laws. Republicans acknowledged the mistake of the latter provision, and vowed to repeal it. Inflation rose, and many credit card lenders were doubling and tripling their rates. The dollar again fell sharply against the Euro.

A U.S. Marine was caught on videotape as he shot and killed a wounded, apparently unarmed man in a Falluja mosque. Soldiers at Fort Lewis, Washington, were throwing chocolate pudding and lemon-lime Gatorade at each other in order to prepare for duty at Army detention centers like Guantanamo Bay. "I feel good about this mission," said one soldier. "I get to be part of the solution." A student at the McGill University Faculty of Law published a paper in the *Journal of Irreproducible Results* proving that a lawyer is a human being.

British programmers released a game called "JFK: Reloaded," which recreates the Grassy Knoll. "Players will discover just how hard it is to place those three bullets in exactly the same way that Oswald did," said a spokesman for the game company. Kmart and Sears merged, thieves stole a 10-ton railway bridge in Australia (check eBay), and an elderly South African woman was eaten by a shark. Ukraine elected Viktor Yanukovich as its president, although observers said the election failed to meet international, if not American, standards.

A plague of locusts, which are kosher, swept through parts of Israel. Locusts also invaded Cairo, and Egypt, in an ostensibly unrelated move, decided to allow foreign belly dancers. A new poll showed that nearly one half of the U.S. population believes that human beings did not evolve, but instead were created by God within the last 10,000 years, while only one third believes that the theory of evolution is accurate. The World Toilet Summit was held in China.

J.M.



# Editor's Page: The Quid - What's It Good For?

by Jason MacLean, Co-Editor-in-Chief (Law II)

I want to talk this week about the Quid - what it is, what it's for, and what it might aspire to be. Which means I have to talk a bit about freedom of speech and familiar problem of *de gustibus non est disputandum*, that there's no accounting for taste, let alone deciding one's taste is preferable to another's. But first a little background.

I spent part of last Thursday afternoon in Ottawa watching the proceedings of the House of Commons. Though I had watched before on television a few times, I had higher hopes for it live, a hope, I guess, that it was the mediation of television that made the proceedings seem so absurd. Watching and listening to the opposition question Liberal MP and Immigration Minister Judy Sgro and our country's exotic-dancer program all but dashed these hopes. As I listened to the shouts, the insults, the locker-room banter, and the apt but ironic-in-the-extreme protests of the opposition "Shame! Shame! Shame!" I was reminded of the novelist Philip Roth's comparison of the media and political culture of Czechoslovakia and the United States in the late 60s. Roth observed that in Czechoslovakia, nothing was permitted and everything mattered. In the United States, by contrast, everything goes and nothing mattered.

This is not to say that I prefer Czechoslovakia's political culture to that of the United States. Nor is it to say that I did not find the hurly-burly of the House amusing, at least at first. After all, I had up to that point been enjoying my tour of Parliament. In particular, I was struck by the energy of the place, the feeling that Parliament was not simply a serious, somber place, but a lively and engaging one, too. So a little humour did not seem the least bit out of place. The House of Commons is adorned in green, after all, so as to evoke the green fields worked by the commoners. What could be more common, after all, than a little humour to leaven the serious work of

government?

Too bad that humour was practically all that was on display that afternoon, and too bad that as the afternoon wore on the humour was of the laughing at, not the laughing with, variety. Too bad because the unprofessional, uncivilized, and anti-intellectual discourse of the House serves to reinforce the worst stereotypes of government, feed destructive political cynicism and apathy, and ultimately devalue the forum itself, the very forum we look to for serious discussion of the most pressing issues facing our country.

It's a mistake, I think we can all agree, to take the Quid too seriously. It's not the *Globe & Mail*. It's not the Supreme Court Reporter. It's not the *New Yorker*. The Quid is a law faculty student newspaper, and as such, it can and should inject humour into the study of law, a serious and at times stressful endeavor.

But it is also a mistake, I think, to not take the Quid seriously enough. The Quid, in a very broad sense, is not unlike the House of Commons in that it is a forum for the serious and respectful discussion of ideas. To function effectively in this way, the forum, and those who participate in it as both writers and readers, must be respected. A serious forum may admit, even welcome, the injection of humour, but only humour that works to include rather than exclude.

None of us at the Quid, however, relishes the role of censor. At the same time, there is no such thing as absolute freedom of speech (and, to echo Professor Stanley Fish, it's a good thing, too). Once you say something for a reason, that reason necessarily negates (for the moment) all the other reasons for which one might have spoken. Free, utterly unconstrained speech is possible only on the absurd condition that speech not mean anything at all. Free speech is meaningless speech. Free speech devalues speech.

Nor do we at the Quid particularly relish the role as arbiters of quality or value. There is no accounting for taste, and as editors we at the Quid do our best to put our own personal tastes aside and work on behalf of all of you to publish a paper each week based in the main on students' contributions.

But just as there is no such thing as free speech, there is no such thing as neutral, value-free speech, either. This, too, is to be celebrated, not lamented. Speech is about meaning, about assertion, and about value. Speech is about us, who we are and who we aspire to be. Of course, whose values and which values remain as extremely difficult, thorny questions that do not admit of a timeless ratio. That's life (and law, for that matter). So what is to be done? Just throw up our hands and quit?

In both law and life, we must sometimes draw a line and exercise judgment. Word round the Faculty is that the Quid will print anything. So far this semester, much to my own personal consternation, we have lived up (read: down) to this reputation. Despite very exciting and thoughtful plans for the paper this year, the Quid thus far is hardly an improvement on last year's volume.

It does not have to be this way. We can all do better - editors, contributors, and readers alike - to make the Quid a paper that is at once funny, thoughtful, and without fail respectful.

For our part, we at the Quid will no longer accept articles that single out, exclude, and potentially harm members of the McGill Law community. One needs neither a doctorate nor a diploma in virtue ethics to be able to tell right from wrong, to distinguish laughing with from laughing at. As Cicero put it in his classic (because eminently simple and practical) treatise *On Duties*, "Justice consists in doing no injury to men; decency in giving them no offense." ■



# Pass/Fail Revisited

by John Haffner (Law II)

Last week Jason MacLean provided a long overdue update on the outcome of our ill-fated campaign to introduce a pass/fail evaluation system at McGill Law. He has pulled me in from the cold with his reminder that a promise is a promise.

Fresh from New York law firm recruitment, Jason has concluded that the 'transaction costs' argument – the same argument that was the end of the line for our several hundred petitions last year – has a lot of merit, and that our faculty is not ready to follow Berkeley/Yale and do away with letter grades. McGill, alas, does not have their *cachet*. Instead we should adopt a version of the Stanford model, which gives students the choice as to whether or not they want to take a certain number of courses pass/fail. The Stanford model, Jason now thinks, strikes the right balance between the law firms' hunger for discrimination and the academic call to greater exploration.

Jason's pluralist model has its appeal, and I do think we need to accommodate worldly concerns into any model. That was always the challenge. Where we might disagree now, Jason and I, is on the ultimate destination: I would still favour pass-fail as a faculty-wide model down the road, but we would first need to have a level of aspiration as a faculty commensurate with this freedom.

So my view now would be, better to transition to the Stanford model so that 20 years from now we could have a pass-fail model. Perhaps Stanford is planning to do the same. Meanwhile we could clean up our funding situation and think about why it is that we are uncomfortable breathing the same air and aspiring to the same level of excellence as the likes of Berkeley and Yale.

I think the answer to that question goes beyond our hallowed faculty and is part of a much larger reality: we are a Canadian institution. Much as I love Canada and I am a proud Canadian, I think Canadians still have a lot of colonial neuroses by which we unconsciously sell short even our best institutions.

There was an editorial comic a few years ago depicting a Canadian beaver accepting accolades from the UN for being ranked the best place in the world to live. The beaver said, "I'd just like to say, on behalf of all Canadians, that we would really be more comfortable if we were second place." So it is for us Canucks, except in hockey.

But the fact remains that McGill law is uniquely situated to show world-class leadership in one respect, because of our ambitious experiment with transsystemia. True, we do not have the endowments of top American faculties, but we have a breadth and depth of understanding across legal traditions that is extremely rare, and better still, we are prepared to convert this understanding into new ways of learning and thinking. It is because of this capability that we could push through to the next, unquestioned level of excellence.

Just as INSEAD in France and IMD in Switzerland now compete in the same league as elite American business schools, and the top consulting firms and investment banks eagerly travel to their campuses for recruiting, McGill Law could enjoy a similar status and offer its graduates comparable opportunities. But it would require us to be hungry. We would need an ambitious vision. Ambitious, but not unattainable.

Reality check: perhaps McGill will not be leader in reforming legal education in all

respects. And to be fair, we are still only taking baby steps with transsystemia. We can hardly expect Kofi Annan to come looking for summer interns when we still cannot clearly explain to ourselves what we are doing and why it gives us an edge.

Andres Drew made a perceptive point the other day: ironically, it might have been easier to have instituted pass-fail 50 years ago – back in the dark days of memorizing black letter law – because at least law firms were not yet hell bent on competing with one another at all costs (including minimizing the loss of billable hours in recruiting students). The law firms have become quite impatient, and the law faculties need to keep them interested. If McGill Law has contradictions in this environment, they reflect the profession more generally. But I'm hoping that as global legal traditions become even more interconnected and interdependent in the next several decades, and as our McGill experiment grows older and wiser, our faculty will gain correspondingly in importance and profile. And as it does, perhaps then we will be able reassure ourselves that we have enough breathing room to regain mastery over our domain.

The law profession will continue to evolve, as will the political mood on university campuses: if we're lucky, between these two key variables, the stars could align in the future for McGill students (it's no accident Yale and Berkeley both instituted eliminated marks in the 1970s). In the meantime, the pluralist Stanford model would allow us a little more space to experiment and learn, without increasing the transaction costs. In the meantime, Jason has offered a concrete suggestion for what our faculty can do today. ■

any thoughts...  
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# Christmas is Coming, Christmas is Coming!

by Mariam S. Pal (Law III)

The first year I lived in the Philippines, I came home to Manila from a business trip in early September. At Manila airport, they have a nice tradition that high school bands play in the airport to welcome incoming passengers. Most of the time they play traditional Filipino music but on this particular September afternoon they were playing *Jingle Bells*. I remarked on this fact to the customs officer who looked at me with an avuncular smile and proclaimed "Christmas is coming. Less than four months." In the Philippines, I would learn, Christmas is taken very seriously indeed. If you think that the shopping season is too long here in Canada you should go to Manila and see some really serious Christmas preparations. Christmas traffic in Manila is legendary. I have spent up to four hours caught in Christmas traffic jams. A friend of mine even ran out of gas during a Christmas traffic jam in Manila.

Where I worked, the Christmas party was a huge annual tradition and each department would organize its party well in advance. I often played the role of "mistress of ceremonies" as it was called which meant handing out prizes for the winners of amateur divisional singing / dancing contests and ridiculous party games. Traditionally, these usually involved pitting female secretaries versus male professionals but were getting less popular due to the fact that more and more of the professionals were women! Each department was allocated a special Christmas party budget by the personnel department and this was used for the party. To my surprise, each employee was also entitled to a gift of food, usually a ham. Collection envelopes circulated to ensure that a Christmas cash gift would be given to the guy who brought us coffee, to the photocopy guy, *etc. etc.* ... Professional staff were expected not only to give a gift to their own assistant but to all of the assistants in their division. Unfortunately I didn't know this the first year but I caught on pretty quickly. The point is not to get anything very expensive but to share the wealth so to speak and give everyone a token. The last few days at my office prior to Christmas absolutely no work was done. All of the Filipino staff seemed completely consumed with delivering gifts, receiving gifts, wrapping gifts, and of course buying gifts. My own assistant usually had a small mountain of gifts on her desk by Christmas Eve. At my house it was much the same story with Christmas cards containing helpfully-self-addressed empty envelopes coming from the paper boy, the mailman, the garbage collectors, the gas company meter man, the electric company meter man, the water company meter man, *etc. etc.* ... You get the picture. Through all of this what I learned to do was to be a bit more generous at Christmas time and spread my wealth around. The funny thing is that nobody seemed to expect very much but the gesture was very much appreciated.

When I returned to Canada two-and-a-half years ago I tried applying some of what I had learned in the Philippines to Canada. I started off small. I didn't work any more and I hardly knew anybody at law school so what I did was I baked some cookies and gave them to the doorman in my building on Christmas Day. He really liked them. So I gave some to the doorman who worked on Christmas evening. He really liked them too. Then I got bold. I gave a candy cane to the bus driver. He looked kind of grouchy and you know what he gave me this huge smile. Last year I baked cakes for a few people like the janitor

in my building who's always so nice to me.

All this may sound kind of corny and you may think that all that sun in the Philippines did something to my head and that this article reads more like a Hallmark card rather than something written by a future lawyer. Well you may be right. But then again you may be wrong because maybe I learned something in those years in the Philippines. And that was that a little kindness and remembering those around you can be a worthwhile gesture that makes somebody feel great at very little cost to you. I know that everybody is stressed out about papers and exams. I have a lot of work too. But once it's all over and the holiday season is upon us think about spreading a little kindness. You'll be surprised at what comes back to you.

Wishing you all good luck with papers [especially footnotes!] and with exams and all the best for the holidays and the New Year. See you all in January. ■

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# Why The Simpsons Disfavour Canada And How The Hellacopters Can Make It Up To Us/Nous

by David Perri (Law III)

I'm going to immediately apologize for writing yet another Canadian unity article. I know you're probably completely sick of this Canadian identity debate in the Quid, and I also understand I'm simply beating a long-dead horse via the following lengthy assertion. However, this time I'm hoping I won't raise the ire of any language warriors ... I'm being conciliatory!

So, amid really innocuous channel surfing tonight (MuchMusic – Green Day video, MusiquePlus – exact same Green Day video), I came across a Simpsons re-run. I haven't been an avid Simpsons watcher in almost a decade, but what caught my eye (well, my ear mostly) on this particular evening was Bart and Milhouse singing "O Canada". Like any Canadian with a national inferiority complex, I always find it cool when we get validation from our neighbours to the south (despite the fact that I disagree with all of W's foreign policy ... but that's another debate for another time), so I watched Springfield sing our praises. After Bart, Milhouse *et al* finished the anthem, the scene flashed to Marge. She smiled and held up both a Canadian and Quebec flag. Though the frame lasted for only a few seconds at most, the duality Marge propagated was clear: a conflicted red maple leaf with its blue *fleur-de-lys* sparring partner by its side. My emotional response (err, interest) was piqued.

The person I was watching with assured me that the Simpsons have a number of Canadian writers on staff, and one of them might just be from Montreal. Hence, the presence of the Quebec flag was more of a personal celebration rather than any political manifestation. Extending that logic, had that writer been from BC the effervescent sunrise of the British Columbian coat-of-arms would be ever-present. And while that's probably the case, my inherent sense of *realpolitik* (political paranoia?) led me elsewhere. I instantly began wondering about this miniscule action's political and social implications.

Last summer, the Montreal Gazette published an interesting editorial that dealt with the Canadian discourse (I'm using the term

"discourse" in the Foucaultian sense and not in its usual sphere - yeah, that's being intellectually pretentious ... but we're law students, no?). The Gazette aptly pointed out that the term "Canada" was being usurped by the dual-natured hyperbole of "Canada and Quebec" or, conversely, by the more tongue-pleasing "Quebec and Canada". Lest one believe this practice is merely a slip or a hallmark of the separatist movement, the Gazette also remarked that institutions as flagrantly pro-Canada as CBC Radio routinely used this descriptor. To some, this phenomenon might not seem like that much. But the Gazette's point stayed with me, and it flooded back when I saw that brief Simpsons moment.

What bothers me, exactly, about this entire situation? The fact that, in my mind, English Canada *and* French Canada are represented in the maple leaf. It's why our flag was created, in order to reflect a language-neutral symbol that those in both Calgary and Rivière-du-Loup can relate to. To separate the French and English elements of Canada into mutually-exclusive factions *à la* Marge Simpson creates a sort of dangerous reinforcement that says the Canadian identity must be negotiated by two flags. Continually fostering this idea (much like the Gazette's point above) makes it a norm, a custom, and a reality. Essentially, the Simpsons portrayed a version of Canada (or not-Canada, I guess) that currently exists only in the minds of sovereigntists. If the maple leaf can't denote English Canada as well as the *fleur-de-lys* contingent of our experiment in federalism then we should create a new flag, a third way that will enact a sense of belonging for both halves of the currently (slightly) tattered notion of the Canadian people. As it stands though, I'm not advocating that option. I don't think there's a need for it.

This past summer, I was hanging out on St-Laurent with a bunch of friends. It was during the Jazz Fest, and we all felt differently about our city being over-run by large quantities of American tourists craving their fix of saxophone. Along with some of those aforementioned friends, I ignorantly thought we'd be able to immediately spot an

American based on aesthetic alone and, as such, as one middle aged woman walked by I yelled out "American!" She didn't appreciate the gesture and as she continued to walk past us said, "Je suis canadienne!" We were all a bit shocked that she wasn't from the States, but almost immediately after that realisation a few of us felt a new sense of surprise: had she said she was "canadienne"?

The prospect of her casual, and obviously spur-of-the-moment, assertion really excited me. She could have just as easily said she was "Québécoise" which, I think, is what we all expected her to utter after her revealed absence of Americanism. She could have equally asserted she was "Montréalaise". But instead, she chose the national description, and I couldn't have been happier. I'm sure if that woman had been with me during the Simpsons moment she'd be proud that the Quebec flag was on display, but I'm also assuming she'd feel that she didn't need the blue and white to represent her national identity. According to her self-description that night on St-Laurent, the maple leaf was adequate. How incredibly uplifting.

I'm a big fan of this Swedish band called the Hellacopters. They're the absolute epitome of real rawk, and the members all naturally exude cool (except the drummer). Stay with me, this will come back to Canada in a second. Anyway, the Hellacopters put out one of the greatest rock albums of the last decade called *Payin' The Dues* - check it out. The Hellacopters were formed during the mid-'90s by none other than Nicke Andersson, who at the time also manipulated drums in a death metal group called Entombed. Though Nicke eventually left Entombed to sing and play guitar in the Hellacopters, he doesn't shy away from his tombed past. If you go to a Hellacopters show in an Entombed shirt bearing the words *Left Hand Path* or *Wolverine Blues* (unanimously considered the two best Entombed records by fans), you won't be ostracized. Instead, Andersson embraces listeners of his old troupe and brings them into the Hellacopters fold. He is proud and excited about both of the great bands he's worked with, and his ►



identity is able to resolve the two. Of course, the first thing you'll tell me is that he's currently kickin' it in the Hellacopters *exclusively*; however, his commitment to Entombed never waned as a result of creative difference.

He simply didn't have the time to be in two full-time bands with conflicting tour schedules. In Andersson's world, he is a valued member of multiple factions, and his duality is affirmed in the singular. I'm not being sub-

tle, I know. But let's hope that the next time the Hellacopters tour Canada (soon, damn it!) we'll internalize Andersson's identity resolution and make it our own. ■

# Bilingualism or Bi-idealism (Of the Cheap Kind)?

by Adrián Cisneros Aguilar (Exchange)

English and French, *français et anglais*, which one goes first? How do you arrange them without provoking heated discussions throughout the whole term in the faculty's newspaper? The question is more than just a matter of order of languages in a notice from the dean or grammatical perfection in written and oral speech. It's about arranging them in such a way so as to avoid hurting someone's feelings by making him feel undermined. It's, perhaps even more, to put into practice that Latin maxim that's so well known to all of us: *constans and perpetua voluntas ius suum cuique tribuendi* (the constant and perpetual will to give everyone his or her own). And "his own" this time is a voice and respect for what that voice has to say, either in French or English.

Given that, among other things, and despite the fact that I've only spent a year here in Canada: 1) I've been interacting with born and non-born Quebecers alike on more than an incidental basis, 2) my English proficiency has improved enough to be able to write this in an intelligible manner (finally, thank God), and 3) my girlfriend is Anglo-Canadian while my roommate is *Québécois pure laine* (which gives me a more accurate perspective of the differences between the two), I thought it could be useful to give a different - and as unbiased as possible - perspective, based on personal experiences, on the problem of bilingualism<sup>1</sup> that is affecting our faculty, while at the same time express my gratitude for the tremendous opportunity to be in McGill's Faculty of Law, Montreal, Quebec, Canada (yep, all together).

There's a problem with something that is obvious, yet it's hard to see: bilingualism, as the word says, should be about equal coexistence and not about imposition or exclusion disregarding other people's necessities. Neither should it be used as a vehicle to throw old hates on people. In other words, I think

it's not all about francophones or anglophones, but allophones as well. There are people who are affected by this struggle for a switch in the linguistic balance of power rather than for equality of treatment of language. I totally agree with Aram Ryu's position (Editor's Page: Punctuation and Bilingual Faculty, *Quid Novi*, October 13, 2004): aiming to have a literally 50-50 bilingual faculty would be extremely expensive and McGill has nowadays a lack of economic resources. I'm saying this as someone who saw his stay here at stake because McGill couldn't afford having more exchange students who didn't pay their fees here, and also as someone who was involuntarily caught a couple of weeks ago in a demonstration against Jean Charest's \$103 million cut to university funding, which would raise costs. Well, by trying to implement this proposed policy of more French courses, more French spoken by professors, *etc.*, we would only be "adding more wood to the fire," as we Mexicans say, don't you think?

But I have to say in addition that this view has another defect, in that it ignores the cultural reality of our faculty. As Aram Ryu pointed out (*idem*): "Until the Faculty can find sustainable additional sources of revenue, most of the courses have to be offered in English according to the principle of democratic representation ... We are not at Université de Montréal where almost every student is francophone." Here at McGill the majority of the student population is - and has always been - anglophone. Moreover, a good deal of international students who come to Canada to study speak English more often than not (and if I'm wrong, go and ask Concordia the reason for their success). I can't tell you all the times this year that I've seen non-French speakers, especially exchange students, virtually alienated when someone asks questions (or worse, starts giving a speech) in French during class, let alone

trying to understand the decisions of *la Commission du Travail* or the *Cour de Cassation*, for example. Aren't we supposed to share and enrich discussion and debate during class? I've been on both sides, that's why I'm asking you not to get me wrong: I'm not advocating for an eradication of French from this faculty, I'm just saying that demands of representation should only come up to some point where everybody's needs are taken into account. Once this is understood, the law faculty will really start to be bilingual (cultural), or, why not, multicultural.

Now, before giving a description of my experiences, at this point maybe more than one has asked himself why I wrote "our" faculty above. Well, after almost a year here and having tried my best to mix with student life, after cursing the registration processes, and after attending events like Skit Nite or the Mystery Party (man, I even have my Law sweatshirt!), I think I deserve to be considered a McGill Law student, and I'll always be proud to say that no matter where you go, Quebec City, Toronto, or Mexico City, when you say that you study(ied) at McGill Law, people look at you with different eyes.

I have to say that when I left for Montreal I did so with a bunch of expectations that, if they haven't been overridden by reality, at least they have been radically changed by it. Specifically regarding bilingualism, I knew that Canada was bilingual, but I had no clue about *up to what point it was bilingual*. Unfortunately - and I'm going to complain about this when I go back to my university - they told me: "Don't worry if you don't speak any French, McGill is anglophone, you'll be fine." Really?? Ask M. Séguin, for example, up to what point McGill or even Montreal are anglophone enough so as to sustain the argument they gave me. I remember the first question they asked me in the Immigration office at Dorval: "Do you speak French?" ►



I was so naïve that I even asked myself the reason for such a question, if after all in both the city and the university I'd attend I could speak only English. I guess that it's not until you go to the place that you see things the way they really are. At least back then I knew one thing: I didn't want to live the typical exchange student's life (what I understand by that is work for another day) - I wanted to mix and learn about the country and the province that had welcomed me in. And damn if I learned, in both positive and negative ways ...

During my stay in Montreal I've learned some valuable things for life, other than French. Since I don't want to bother you guys with excessive details that I'm sure only matter and mean something to me, I'll attempt to classify my experiences here regarding bilingualism and the things that are attached to it in three major, say, domains, as follows.

#### **I learned to be more human:**

It seems that a vast majority of law students have everything to their advantage: intelligence, education, drive, and critical attitude. Everything, that is, except the most important thing: *vocation*. This phenomenon doesn't respect law faculty or country. I think I can say now that I *was* like you,<sup>2</sup> I wanted money and power, I wanted the old elementary school bullies to watch me on TV one day and say: "Man, I used to kick his ass and now he could hire me as a fucking janitor!" (with all respect); I wanted to travel, have a nice Mercedes, etc.

Today, I'm not quite sure anymore if that's what I want for my life. Something "clicked" inside me while being here: the price to pay is completely disproportionate - your family, health, maybe even your life. OK, perhaps I'm being too fatalistic - I guess that what is most likely to happen is that you lose dimension of who you really are and all those things that are really important in life, your true self. Both in Mexico and Canada I've sat beside people with neither vocation to serve society nor desire to pursue transcendental goals in life. Money and power, fuck! Law school is hard enough so as to still be driven just by that. Eventually because of this I found myself still with vocation, but completely disappointed with the legal world itself. And yeah, it sounds contradictory (as if someone tells you that he or she wants to become a swimmer, but hates water), because that's the way it is, take it or leave it. Respect your vocation or go with the flow. And the funni-

est part is that one day, you can lose everything, professionally speaking, get fired or busted, who knows. Is your life going to tear apart? Well, it'd be a shame if it does. Since I realized that I wanted to avoid feeling like that (and although because of the disappointment I expressed above, I don't know what the hell I want to do with my law degree), at least I made one decision here: I want to become a lawyer, *but I don't want the lawyer to become me*. I have started to learn to give importance to things that really deserve it, while still putting an effort in my stuff, and I've become more capable of leaving everything in order to have an experience that will enrich my life, to do something I believe in, or to help someone.

Constantly seeking to enrich his or her life, that's how the *university* student should be, regardless of whether (s)he's a law student or not.

#### **I confirmed my hypothesis: History is always useful to understand ourselves today, as it projects itself to the future and we, rational animals, tend to repeat the same mistakes over time:**

This one goes for some Roman Law students that, according to Mariam S. Pal (Lawyer Bashing - It's Nothing New, *Quid Novi*, November 23, 2004), seem to regard history as just a bunch of past facts whose study has no real practical advantage.

Let me illustrate my point that history is useful with an example. On the day after my arrival, I lived a really embarrassing episode in the Peel metro station. I had a problem with a ticket and, to put it shortly, the woman in the ticket booth started to give me shit. I still remained very polite and said, "I'm sorry, I don't understand you." (Remember that I didn't speak any French at all back then.) Well, the woman started to yell at me in French, while slamming at the window, and all the people in the line-up (it was rush hour) were just looking at me without doing anything. Eventually I got through it, but it can be really stressful when you're still on adaptation.

Now, the easiest thing would have been to generalize and say that *Québécois* are impolite and crazy. That they don't understand that if you don't speak French it's not because you don't want to, but because you *can't*. And for a while I have to say that I was very tempted to do so, but then I asked myself, "OK, why are they so picky with something as superfi-

cial as the language?" I saw it that way because I came from a unilingual and unicultural country where these problems just don't occur, given that we mixed fairly early. Since I like history a lot, I thought that perhaps the answer was in the past. That's how I learned everything I could about both Quebec and Canada's history. And I found out that there was a reason for this "pickiness" - notice the quotes now. All of you know perfectly Quebec's history post-Battle of the Plains of Abraham and until the present day, passing through Papineau and the nationalist awakening championed by René Lévesque in '76, so you know what I'm trying to say. The stand was for an identity to be respected; language was only an evident manifestation of such identity. It was about raising a voice that inclusion shouldn't mean assimilation by a pretended "superior race." Once I learned that, it was much easier for me to understand this city and get myself around it. I also realized that if I really wanted to experience Montreal and Quebec beyond the typical exchange student's perspective, that is, to see them the way they really are, I had to learn French. Thus, for the whole summer I took a French intensive course and I learned and enjoyed it immensely. Today I live, as I said before, with a *Québécois pure laine*, a guy - whom with affection I call *mon grand-frère* - with a shared love for both his province and his country who has done for me more than simply help me with my French. He has taught me *Québécois* wisdom, lifestyle and history, the kind that you don't get in books. And perhaps, alongside with the lesson of being more human, the biggest lesson I've received from him has been tolerance. This brings us to our third point.

#### **I learned that, in the words of my girlfriend's mom, "Human beings tend to be discriminating and intolerant. In fact, they have to fight not to be":**

Yep, not everything here has been sweet - discrimination and intolerance are everywhere, and I might add that they have nothing to do with ignorance or fear of the unknown. You can perfectly understand others' reality and still be like that. I've seen people at the Shatner Building whispering shit about the Muslims who are breaking their fast there; I've heard people in the JazzFest saying "This is full of Hispanic people ... this festival isn't as good as it used to be"; and I've found people who would rather talk to me in French, English, or Spanish - according to the situation - before allowing me to adapt and ►



speaking *their* languages, thus limiting me in my practice of them, one of the primary reasons to go abroad on exchange.<sup>3</sup>

As I said before, discrimination and intolerance are everywhere. Coming from a unicultural country, it's understandable that I had never experienced that before, at least not in those circumstances. But on the other hand, I'm deeply convinced that what has made Canada a great country is its ability to include everyone. To be tolerant - even with people who aren't. I've found that everybody is YouNameIt-Canadian, nevertheless everybody's Canadian in the end, and is proud and grateful to be such. Inclusiveness is what has made Canada a "melting pot," and that's why I'm of the opinion that one shouldn't claim all the attention and/or benefits at the expense of others. Here comes an obvious rule of human relations: if you claim to be tolerant, don't be intolerant with those who don't share the same views of tolerance you do. Why? Pretty obvious that you'd end up being as intolerant as the people you criticize, isn't it? Besides, it's been for sure an education. I wouldn't change any of my experiences here, no matter how bad they might have been, because in exchange I received the gift of meeting so many people from so many different backgrounds. And I think I can say without exaggerating that every single one of them has given me - maybe involuntarily - a lesson of life, from love to politics.

#### Conclusion:

With these experiences I've attempted to prove that it appears that sometimes we confuse the term equality for imposition, understood as selfish demands of uniformity. The true meaning of equality, philosophically speaking, is "To treat the equals equally, and the unequals unequally." To the untrained ear this might sound as an open discrimination motto. However, it might be one of the most just definitions I've ever read (don't ask me to quote here, I just remember it from my Natural Law course, back in my country), because it means to respect the differences and the particular circumstances of everybody else. To try to make everyone comply with your needs is nothing but egalitarianism which borders on exclusion. The truth is, being a franco, an anglo, or an allophone (or a mix) is, more than speaking or writing the language, a way of thinking. It's about having an attitude of openness towards new cultures while sharing what your own culture has to offer,<sup>4</sup> all without the fear of stereotype or being stereotyped. Let's keep that in mind before making language demands or recriminations.

I'm in a rush to send this. It's 4:55 in the afternoon and I didn't get too much sleep last night for writing this. But I don't feel tired at all. I had something to say, and I said it. See what I meant when I said that I've learned to occupy myself on those enriching things that are *really* important? ■

<sup>1</sup> Or biculturalism, more specifically, as I think that language is only the primary manifestation of a struggle for identity, as I'll describe later.

<sup>2</sup> If someone feels affected by this comment, let me assure you that it's nothing personal, but you know what they say: "If the shoe fits, wear it."

<sup>3</sup> Don't get me wrong, I'm not against speaking my mother tongue, English, or French, it's just that it'd be better to speak them only in the right situations, and not always. Although I have to admit that this may not always be the case, while I thought at first that these people were just trying to be welcoming and inclusive, I later realized that they weren't doing it for me, but for *them*. Eventually, that led me to adopt a non-speaking-the-language policy. Mean? Maybe, but only at first sight.

<sup>4</sup> The Canada Interpretation Act gives a very nice example of this attitude. I remember Professor Janda talking about how it works: Given that English and French versions of one legal document have the same value, if one version is more complete, it can be used to *complement* the construction of the other.

## Exiled Burmese leader to speak at McGill

by the McGill Human Rights Working Group

Burmese Prime-Minister-in-exile Dr. Sein Win and his delegation will speak at the McGill Faculty of Law on "*The Current Situation in Burma and Future Prospects*." The talk will occur in the Moot Court in New Chancellor Day Hall, 3644 Peel Street, at 7:00 p.m. on Monday, November 29.

Burma has been ruled by a reclusive military regime since 1962. Dr. Sein Win was elected Prime Minister of a coalition government when the opposition National League for Democracy (NLD) swept the country's free elections in 1990. Unwilling to relinquish power, the military leaders ignored the election results and placed Daw Aung San Suu Kyi, cofounder of the NLD and 1991 Nobel Peace Prize winner, under house arrest.

Since the 1960s, Burma has been the perpetrator of gross human rights abuses, including murder, torture, rape, political imprison-

ment, and forced labour. Amnesty International has called Burma "a prison without bars." The country lacks civil rights such as freedom of association or press. Social conditions have deteriorated and extensive environmental destruction has occurred. Recently, the International Labour Organization (ILO) has investigated Burmese forced labour practices.

The McGill Human Rights Working Group (HRWG) joins several governments and human rights advocates worldwide in condemning the rights violations in Burma. Dr. Sein Win is head of the exiled National Coalition Government of the Union of Burma (NCGUB), whose main objectives are to implement the results of the 1990 May general elections, end military totalitarianism in Burma, and seek a comprehensive political settlement based on democracy and human rights.

Dr. Win will be joined by delegates Bo

Hla-Tint, MP-Elect of the National League for Democracy, and Zaw Oo, Director of Policy and Research Programs of the Burma Fund. The conference is being organized by Rights and Democracy, in collaboration with the McGill Human Rights Working Group (HRWG) and the Burma Solidarity Collective. ■

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# Isn't It Ironical, Don'tcha Think?

by Sean Hutchman (Law I)

Let me preface my letter by saying that I hope my sense of irony has not been misinformed by Alanis Morissette's catchy lyrics. The reason I write of irony is Mr. Ryu's latest editorial on so-called Canadian paternalism, and more specifically the dangerous role of labour organisations and unions in Canada. Mr. Ryu starts off very much indignant at being maligned for having criticised the state of democracy in the United States, concluding that he is expected to "sugar-coat" a worrying issue. He assumes that his editorial was not well-received because as a non-American it is not politically correct to criticise America. So, since he is a Canadian, he decides to talk about a Canadian issue. He then proceeds to explain how the clout of unions in Canada, and in particular Quebec, is a menace to the economy. Apparently "extreme social activists and big labour unions" are the citizen's enemy. They are to be distrusted for their utopian ideals and refusal to face the inevitable onslaught of globalisation. Now, is it just me, or does this sort of antagonism towards the labour movement smack of bred-in-the-bone Republicanism?

At the risk of flogging a dead horse, I will return to Mr. Ryu's previous editorial on American democracy. I did not write a letter to the editor because I thought anyone who

criticises the US should be muzzled. Far from it! But it is important to be critical for the right reasons. One of the most disturbing aspects of George W. Bush's election campaign was the brilliant manipulation of the moral values debate. Somehow Republicans managed to sweep under the rug that caring for the poor is a basic Christian value and that on that point the US under George Bush's watch has been decidedly un-Christian. Take for example a recent survey on the ethnic dimension of income disparities in the US. The net worth of the average white person in America is approximately \$80,000. The net worth of the average Hispanic person is approximately \$8,000, and the net worth of the average black person is a paltry \$6,000! I suppose at this point you are asking what the point of all of this is. Well, Mr. Ryu, it is highly probable that ethnic minorities in the US are so much poorer than their white compatriots at least in part because of their near monopoly over the non-unionised service sector. Of course an abundance of cheap labour allows consumer spending to rise and keep the economy afloat, but if the wealth thereby created is not fairly distributed one is left to conclude that wealth is not in itself a good thing.

Mr. Ryu is not however entirely off the mark on the issue of unions. There is a reason

that the word union is often followed by the word intransigence. But as an employee of a unionised company, I can tell you that unions are by far the lesser of two evils. They may at times make unrealistic demands or appear out of touch with their members, but unions cannot be held solely accountable for the antagonism to which employers often directly contribute. And it is truly offensive to read the final line of Mr. Ryu's woefully uninformed discussion in which he states that "people themselves must change, not at a glacial pace, but in tune with the evolution of the world, armed with proper knowledge and with slight self-sacrifice in mind." This reminds me of my employment at Air Canada as the company was under bankruptcy protection. The CEO, Robert Milton, berated unions for refusing concessions - which were given many times over - while he continued to earn a base salary of \$1,000,000 as the company faced imminent liquidation. With all due respect Mr. Ryu, union members do make sacrifices, and they aren't slight. Save your smug homilies for the billionaires of the world, not its blue collar workers.

Now that I think about it, Mr. Ryu isn't so anti-American. In fact it seems he wouldn't have such a hard time fitting in south of the border. ■

## President's Perspective

by Michael Hazan (LSA President, Law III)

I can't believe it's November and exams are just around the corner but I wanted to give everyone a quick update on what has been happening with your LSA these last few weeks.

At last week's LSA Council meeting, your student representatives voted to amend LSA by-laws to reflect new realities. These changes were the first since 1999. Changes included repealing by-laws that made reference to McGill's old National Programme, updating responsibilities of the LSA Executive, LSA committees and the *Quid Novi* and removing mention of the now defunct LSA bookstore. I would like to thank VP Academic Toby Moneit and VP Finance David Dubrovsky who took the lead on this

project over the summer to ensure that the by-laws to our constitution were up to date. A copy of the amended by-laws will be available on the LSA website shortly.

After receiving weekly heat from Greg Sheahan (Law III), we were finally able to hook up our satellite dish. If Greg isn't there with his morning coffee watching Regis, Kelly, Wolf, or Judge Joe Brown, I might just take offence.

Comme vous le savez, nous avons un nouveau laboratoire informatique dans le sous-sol de l'OCDH. The renovations and the computers were paid for mostly by the LSA with the money that we collect from your student fees. It is up to all of us to protect our invest-

ment. So if you see anyone with food or drinks in the lab, please tell them to leave it at the door.

Au niveau communautaire, la faculté de droit a ramassé 325\$ pour Centraide grâce à notre "Loonie Line." Je voudrais remercier tout spécialement Catherine Lambert notre vp-interne, ainsi que tous les volontaires qui ont aidé au cours de la journée. Deuxièmement, vos présidents de classe organisent notre collecte annuelle de dons pour les fêtes. S'il vous plaît, apportez des denrées non périssables ainsi que des vêtements dans les boîtes situées dans l'Atrium. Merci de supporter Centraide et Yellow Door!

I know you are all looking past exams ►



and into January so be prepared for our annual Speaker Series coming January 10-14. VP PR Laine Destin and VP Clubs and Services Liat Tzoubari have booked some great speakers that will be discussing topics ranging from international competition law and constitutional law to corporate governance. Spurred by our victory in the Malpractice Cup, VP Athletics Matt Bilmes made a Joe Namath guarantee that we will not return from the

Law Games in Ottawa without any hardware.

Thanks to all those students who came to our first town hall meeting with Dean Kasirer. Ce fut une session d'information très intéressante et nous en aurons un autre le 9 février 2005 à 12h30 dans le Moot Court.

I have been getting a lot of positive feedback from students about how the LSA is

being managed this year. The LSA Council is encouraged by your support and should you want to get involved, please do not hesitate to contact me or any other member of the team. Special thanks to all the students who sit on our committees, help out at Coffee House and organized the Malpractice Cup and Halloween Party. Bonne chance dans vos examens et passez un excellent temps des fêtes! ■

# Magazines, Newspapers, and Steel-Toed Boots

by Leila Jawando (Law II)

Despite the apparent inconsistencies that exist in property law where animals are concerned, most people would agree that non-human life forms **do** have rights that should be respected. That said, I must admit that I am guilty of being a slightly prejudiced in this regard. I try not be of the "I am human. You're not. So you suck" persuasion. Really, I do. In fact, I always thought that I had succeeded, but I realise now that I was only deluding myself. It turns out that I do not grant the same respect to all life forms. There are certain life forms for which, unfortunately, I have very little regard: creepy crawlies. I have absolutely no respect for the rights of bugs and I am not afraid to admit it. Recently, I learned that one bug in particular really gets my proverbial goat – the snail.

with a friend in the atrium, reflecting on the passing of the ODB, the coming of exams, and the mysteries of Secured Transactions. Suddenly, I felt a chill down my spine. I turned around. I was greeted by a frightening sight: two snails were expressing their love for each other on a nearby couch. And no, I do not mean that they were giving each other snail high fives.

At first, I thought they would slither away and find a dark place within which to continue their sordid affairs. Then I realised the gravity of the situation – if I didn't do something quickly, one thing would lead to another ... and they would breed! My inaction would, thus, single-handedly lead to a mass infestation of snails in the upper atrium. As this spot is cherished by many, I would not have been able to live with this on my con-

science. So I desperately searched for a magazine, newspaper, or steel-toed boot with which to shoo them away.

Unfortunately, there was no such array of weapons at my disposal, and I was forced to avert my attention in hopes that they would slither away of their own volition. Soon after, the snails disappeared into the darkness from which they had surfaced, and the crisis was over.<sup>1</sup> All had returned to normal.

Fortunately, this encounter did not lead to a propagation of snails in the upper atrium. Lucky for us! But we must be careful not to underestimate their intelligence. They will be back. And next time, I will be ready! ■

<sup>1</sup> No snails were harmed during *this* episode of snail promiscuity.

## Avis de recherche de candidat: Stage à la Croix-Rouge

Prof. Armand de Mestral cherche un candidat pour faire un stage à la Croix-Rouge, Division du Québec. Le candidat travaillera sous sa direction et celle du professeur Provost et de la responsable de la Croix-Rouge à la conception et à l'organisation d'un colloque sur le droit humanitaire coutumier. Le stage comprendra l'élaboration d'un projet et d'une proposition avec des thèmes et une structure en lien avec les conclusions du rapport de la C-R sur le droit humanitaire coutumier dès le mois de janvier (fin janvier-pour 15 semaines). Le stage peut recevoir des crédits à la faculté (3 crédits). Le travail se fera en français et en anglais.

Les personnes intéressées sont priées de contacter [armand.de.mestral@mcgill.ca](mailto:armand.de.mestral@mcgill.ca) ou de téléphoner 398-6643.

Please e-mail or telephone me.

Good luck on exams and  
enjoy a much deserved  
vacation.

Happy New Year,  
The Quid



# Overruled Rules!

by Lindsey Miller (Law III)

**V**ictory! Last Thursday, Overruled trounced the Cougars to win the Women's B division volleyball championships. Cheered on by a small but loyal group of fans, the Law Faculty's women's volleyball team bumped, set, and tipped their way into the history books. After a narrow loss in the first set, the team rallied and emerged triumphant in the next two sets. Some particularly amazing smashes by *Capitaine* Émilie Fay-Carlos and Eva Gazurek helped Overruled carry the day. On the defensive end, Lani Rabinovitch and April

Thomas made impressive - and knee skinning - dives. The excellent setting by Renée Darisse and Carol Gagné kept the volleys alive, and Lindsey Miller kept the Cougars in check with an eagle eye for out-of-bounds calls.

This has been an impressive season for Overruled. The team went undefeated, winning every match straight through to the 6th and final playoff game - where they received oh-so-tasteful McGill beer mugs to hoist another 'final round'. Too bad Coffee House

was already over by the time of the last spike...

Congratulations to the team: *Capitaine* Émilie Fay-Carlos, Renée Darisse, April Thomas, Carol Gagné, Eva Gazurek, Lani Rabinovitch, Lindsey Miller, Nancy Caron, Delphine Neant, and Alexandra Humphrey. A special note of thanks goes to all those who came out to cheer us on during the season. ■

# Chico Keeps the Hammer Down

by Joseph Adams (Law III)

**M**ONTREAL - Chico Resch capped an unbeaten first half of the season last Sunday, running their record to 7-0 against second-place Jockstrap Ensemble. The hard-skating Ensemble proved to be Chico's toughest opponent thus far, jumping out to a 1-0 lead before Nat Brand tied it with a pin point shot ahead of half. Joe Adams put Chico up in the second, cleaning up a Sam Adkins effort directed by the goalie off the end boards. But Jockstrap Ensemble continued to press, and equalized with less than five minutes to play. Brand coolly took this as nothing more than a curtain-call, however, delivering an encore bullet from the blue line to give Chico the 3-2 win.

Assessing possible sources of the team's pre-holiday success after another strong performance in net, goalie Mike Eldridge offered the following: "Listen, I'd love to give credit to the leopard print, but let's face it, it's more of a distraction than anything. If we're looking for good luck charms, I've got to go with Ian's necklace guard." Captain Osellame refused comment on the unorthodox piece of equipment, but did address suggestions the team's slow start on the evening could be attributed to the pre-game sight of his switch in traditional post-game beverage: "Listen, you're playing the Strap, you better be focussed. You better be snugly fastened, pardon the pun. Actually you know what, don't pardon it. All I'm saying is, if that's going to rattle you, I don't even want to know about it."

Chico would also like to take the opportunity to thank everyone who came to their coffeehouse on Thursday - the support is appreciated. And congratulations to 50-50 winner Gillian Nycum who, as the Brand assists were unavailable at press time, will also be credited with 2 Chico points. Check your programs in the New Year. ■



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Ateliers d'espagnol juridique no. 4a et 4b

DESIGN:  
Julien Morissette



# Law & Order - Secured Transactions Unit

by Jason MacLean (Law II)

On Wednesday, 17 November 2004, Professor Rod Macdonald, as part of the McGill Business Law Association's First Annual Business Law Speakers Series, discussed in fascinating detail two recent case studies from his work on secured transactions - the drafting of a new statute on secured transactions for Ukraine, and the design of securitization mechanisms to promote Aboriginal economic modernity in Quebec and Labrador.

Professor Macdonald was selected to draft the Ukraine statute due to a sort of process of elimination, though this is to understate matters somewhat. To understand why requires a little background. From 1850 to 1921, Russian private law was primarily civilian (in the Germano-Romanic tradition). Even under socialist rule, civiliste notions of such as usufructs and cause in contracts were common. Not until 1989 did the law change, as a result of a series of U.S. common law implants. These implants didn't take, however, based as they were on the institutions of a U.S. market economy. The result of this politico-legal transplantation was not unlike the likely result of trying to implant a pig's liver into a cow.

While the French and the Germans vied for legal supremacy in the newly opened eastern bloc, U.S. lenders wanted a system commensurate with the Uniform Commercial Code, and in English. Given all of this, who you gonna' call?

Regarding the First Nations Assembly of Quebec and Labrador, a similar story may be told. The assembly wants a modernized regime that is not a full-fledged American transplant but a transitional phase out of its present artisanal economy. The assembly finds itself in a position, however, in which it must borrow and negotiate politically in the same jurisdiction. The first foundational lesson regarding legal regime change, then, is that political circumstances drive legal choices as much as economic concerns.

But this is to run ahead of the story. What, in the first place, is a regime of secured transactions for? The gist is that the regime will provide that, in cases where the debtor does not pay up, some creditors are more equal than others when lining up at the trough of insolvency. Thus, a

secured transactions regime produces distributional effects. Creditors who negotiate prioritized security charge lower interest rates, rates that cover transaction costs and reasonable profits but no longer the premium attached to the huge risk factor presented by insecure lending.

Now, in Ukraine, how did banks enforce debts absent a secured transactions regime (a problem endemic to Communism, after all - debt enforcement absent private property is a tough slice of bread to swallow, particularly when the state is doing the enforcing). Post-Communist rule, the National Bank of Ukraine enforced debts by sub-contracting them out to the mafia. And how could it be otherwise? Absent a registry system, an efficient, predictable, and fair judiciary, and a bar (that is, professional-institutional regulation of lawyers), the enforcement of obligations is naturally secured by the barrel of a gun. As such, capital is in the main inaccessible to Ukrainian businesses. Ukrainians have decided to democratize and to develop a transparent and foreign-capital-friendly exchange economy. As the struggle for democratization in Ukraine continues to unfold on the world's stage, the importance of functioning legal regimes could not be clearer.

In Quebec and Labrador, given the Indian Act and the principle of non-alienability of real estate, securitization is problematic - you cannot grant a security on that which you do not and cannot own. Problematic too is the historical absence of what might be called an entrepreneurial ethic in aboriginal culture, wherein wealth creation is not viewed as a morally acceptable endeavor. Add to that the mixed, thick social roles that people play in aboriginal cultures where there is considerable overlap between people's social ties, making the role of the detached "market agent" (be it a buyer or seller) utterly foreign; in a community of overlapping relations, a buyer is unlikely to "Wal-Mart" a seller if his price is higher than another's.

Related to this aspect of aboriginal culture is the value placed on tangible objects. Market economies, by contrast, have shifted value away from immovables to moveables, and from moveables to services, and lately from services to ideas. The Indian Act makes

such a shift difficult indeed. In order to shift value to intellectual property, aboriginal communities must, first, change their relationship to land, and second, employ community members so as to create surplus value without having to increase economic scale such that you end up having to cede your intellectual property.

Once this shift in value recognition takes place, securitization becomes possible. The capital value of the projected revenue stream generated by aboriginal intellectual property (e.g., the marketing of authentic aboriginal experience, and eco-tourism, as structures of belief) can be used as an object of security against which to borrow money from foreign lenders. In this way aboriginal communities may develop economically and protect their land (by avoiding the precipitous depletion of moveable property) at the same time.

The next step for aboriginal communities is to create capital pools in the form of aboriginal banks which can themselves grant securities on "certificates of occupation" of land without compromising the aboriginal understanding of land as inadmissible of ownership. Aboriginal banks may pool these certificates in baskets of capital assets to be sold to foreign investment banks such that, in case of default, it is the aboriginal bank that is on the hook, and not the land itself - the land merely backs the security, but is not the object itself of security. That is what I call a creative legal solution to a problem that is equally commercial and cultural, and a counter-example to the facile and grossly uninformed prejudice that business law is necessarily exploitive and rapacious.

Secured transactions may sound to the uninitiated relatively dry and boring. But as secured transactions expert and fellow student Alex Law likes to put it, secured transactions, concerned as it is with creditors and debtors and relations of (mis)trust, is at bottom about our human nature as social beings. Secured transactions regimes depend on myriad economic, political, social, and cultural considerations and, as such, makes for a fascinating point of entry into the study of both the legal ordering of social life and the social life of legal ordering. ■



# Rapport de l'entrevue tenue avec Me Lise Tremblay, directrice de l'Ecole du Barreau, le 16 novembre, 2004

par Jacques-B. Roberge (U. de S.) et Mathieu Lavallée (U. de M.) pour la CADED (Confédération des associations des étudiants(es) en droit)

**E**ntree en vigueur souhaitée du nouveau programme: L'Ecole du Barreau vise à instaurer le nouveau programme dès septembre 2005.

## Processus conduisant au nouveau programme

Avant qu'un nouveau programme puisse être implanté, un nouveau règlement portant sur la formation des candidats à la profession d'avocat doit être adopté en vertu de l'article 95 du Code des Professions. Le processus prévoit une période de publication du projet de règlement, une période de consultation de 45 jours, et les étapes habituelles de lecture qui précèdent l'adoption proprement dite du règlement. La consultation s'étend aux divers acteurs concernés tels que: les ministères d'éducation et de la justice, les universités, les associations étudiantes, etc...

Actuellement, le projet de règlement est entre les mains de l'Office des professions. L'Ecole du Barreau souhaite que le règlement puisse être approuvé pour publication et que puisse commencer dès lors l'étape de consultation. Idéalement, le règlement serait adopté au plus tard à la fin février 2005. L'ultime date limite pour permettre la mise en place du nouveau programme serait la fin mars 2005. Si le règlement tardait à être adopté, l'Ecole du Barreau se verrait obligé de considérer reporter l'introduction du nouveau programme à septembre 2006.

## Statut actuel du nouveau programme

Le nouveau programme demeure un projet tant que le règlement lui donnant naissance n'aura pas été adopté. Egalement, certains des éléments du projet de nouveau programme de formation du Barreau peuvent changer suite aux consultations et aux lectures qui en seront faites.

## Historique

En juin 2001, le projet d'élaboration d'un nouveau programme de formation de l'Ecole du Barreau s'est amorcé suite aux deux constats suivants :

1- Pour certains étudiants au Barreau, le programme actuel est trop lent, trop long et ils ne profitent pas de sa valeur ajoutée.

2- Pour d'autres, le programme actuel va trop vite et ils y vivent des difficultés à mettre à jour leurs connaissances et habiletés.

Des consultations se sont faites auprès des comités statutaires, des doyens et d'un comité des sages. Le comité des sages est formé par des praticiens et divers acteurs du milieu juridique. De plus, un sondage a été effectué auprès de 1000 avocats ayant moins de 5 ans de pratique.

## Rôle de l'Ecole du Barreau

Le rôle de l'Ecole n'est pas de constituer une norme initiale de formation mais plutôt d'intervenir dans la formation à titre de condition supplémentaire de délivrance du permis de pratique de la profession d'avocat. En d'autres mots, l'Ecole du Barreau laisse le soin aux Facultés de droit d'enseigner le droit (le savoir, la théorie du droit) alors qu'elle se concentre d'avantage à enseigner la pratique du droit, axé sur le savoir-faire et le savoir-être. L'Ecole du Barreau définit le savoir-faire comme étant la capacité d'utiliser le savoir et les ressources en vue de résoudre un problème juridique. Le savoir-être se définit comme étant la façon de se comporter de l'avocat dans l'exercice de sa profession.

## Mode pédagogique

Le nouveau programme est caractérisé par l'approche par compétence, c'est-à-dire le savoir être et le savoir faire. Le savoir théorique enseigné par les Facultés de droit est pré requis et il est tenu pour connu et maîtrisé par l'étudiant. Peu de rappels théoriques sont prévus. L'approche par compétences vise à offrir une formation collée sur la réalité et adaptée au marché de l'emploi d'un avocat exerçant dans ses 5 premières années de pratique. Ainsi, des cas pratiques sont soumis aux étudiants et ils doivent les résoudre en se basant sur leurs connaissances en droit et sur les textes de lois, de règlements et de jurisprudence.

## Deux programmes de 4 mois chacun, un seul est obligatoire

Un programme 'compétences' d'une durée de quatre mois sera obligatoire pour tous. Un second programme 'préparatoire', également

d'une durée de 4 mois, sera optionnel et se fera avant le programme 'compétences'.

La durée totale de la formation du Barreau serait donc de 4 mois pour quelqu'un qui ferait uniquement le programme 'compétences'. Il serait cependant de 8 mois (deux fois 4 mois) pour un étudiant qui déciderait de faire, et le programme 'préparatoire', et le programme 'compétences'.

## Programme 'compétences' (obligatoire)

Le programme 'compétences' d'une durée de 4 mois, le seul obligatoire, sera accessible à tout étudiant qui a complété son baccalauréat en droit, reçu son diplôme de droit et ayant satisfait aux conditions d'admission habituelles de l'Ecole du Barreau. Aucune condition pédagogique supplémentaire ne sera requise. Aucun examen d'entrée ou aucun cours préparatoires ne seront requis. Le programme 'compétences' sera offert à l'automne et à l'hiver et comportera environ 320 heures de cours. Il s'agit du même nombre d'heures qu'actuellement, mais en deux fois moins de temps. Le programme sera donc beaucoup plus concentré. La conciliation travail étude durant cette période de 4 mois sera d'autant plus délicate pour ceux qui opteront de travailler en même temps que leurs études au Barreau.

Il n'y aura pas de contingentement, ni pour l'automne, ni pour l'hiver. En d'autres mots, si 1000 étudiants veulent compléter leur programme 'compétences' à l'automne, ils le pourront. La capacité d'accueil de l'Ecole du Barreau sera prévue en conséquence. Peu importe qu'un étudiant fasse son programme 'compétences' à l'automne ou à l'hiver, l'assermentation se fera durant la même année civile, après avoir complété le stage de 6 mois. La seule différence sera le mois dans l'année où les assermentations seront faites. Par exemple, un étudiant s'inscrivant au programme 'compétences' à l'automne 2005 sera assermenté vers le mois de juillet 2006. D'autre part, un étudiant s'étant inscrit pour la session d'hiver 2006 sera aussi assermenté en 2006 mais plutôt vers le mois de novembre 2006. ►



Programme 'préparatoire' (optionnel)

Un programme de mise à niveau et de rappel des concepts théoriques du droit sera offert à l'automne et à l'hiver. La durée sera de 4 mois.

Le dossier de chaque étudiant faisant une demande d'admission au Barreau fera l'objet d'une évaluation diagnostique et une recommandation sera présentée à l'étudiant, lui suggérant ou non de suivre le programme préparatoire. Cette recommandation sera confidentielle et n'affectera pas le dossier scolaire. Aucune statistique ne sera publiée à cet effet.

Evaluation diagnostique (confidentielle et non contraignante)

Le moment de cette évaluation n'est pas encore déterminé. L'École du Barreau suggère vers la fin février, mais la CADED croit qu'il pourrait être préférable de faire cette évaluation après les examens de fin d'année, ou encore d'offrir les deux sessions d'évaluations, au choix.

Evaluation continue

Le mode d'évaluation continue sera privilégié dans le nouveau programme. Une série de cas pratiques sont proposés et évalués. Un cas pratique comprend habituellement un énoncé d'une douzaine de lignes et une copie des lois, règlements et jurisprudence pertinentes. L'étudiant doit qualifier le problème, le diagnostiquer, identifier les faits pertinents, résoudre le cas et rédiger les actes de procédure pertinents. Un feedback continu est

offert. Les étudiants accumulent des points tout au cours des 4 mois du programme. Un examen final complète l'évaluation. Dans l'éventualité d'un échec à l'examen final, un examen de reprise est offert peu de temps après. Un étudiant qui réussit son examen de reprise continue son cheminement normal et ne verra pas son assermentation retardée.

Reprise du programme et réadmission à l'Ecole du Barreau

Dans l'éventualité où un étudiant échoue l'examen de reprise du programme 'compétences', il devra se faire réadmettre à l'Ecole du Barreau. Lors de sa réadmission, l'étudiant se verra obligé de suivre le programme 'préparatoire' avant de refaire le programme 'compétences'. Un échec à un examen de reprise du programme 'compétences' est donc coûteux en temps : 8 mois seront nécessaires pour compléter l'Ecole du Barreau, soit 4 mois pour le programme 'préparatoire' (rendu obligatoire lors de la réadmission) et 4 mois pour le programme 'compétences'.

Coûts

Les coûts de l'Ecole du Barreau devraient demeurer sensiblement les mêmes soit 2625\$ pour les cours et 545\$ pour les documents. Il s'agit ici d'un objectif que tente de réaliser l'École. Les coûts seraient les mêmes, qu'un étudiant prenne ou non le programme 'préparatoire'. En d'autres mots, le programme 'préparatoire' devrait être offert sans frais supplémentaires.

Aide financière

Aucune information ne nous a été donnée concernant l'impact du nouveau programme sur l'aide financière.

Programmes de Common Law

Pour les universités offrant le programme droit civil combiné au Common Law, aucun impact n'est envisagé actuellement.

Mesures transitoires

Aucune mesure transitoire n'est prévue pour les étudiants du baccalauréat. Certaines mesures transitoires sont prévues pour accommoder les étudiants actuels de l'Ecole du Barreau qui auraient à reprendre un examen.

Séances d'Information

L'Ecole du Barreau souhaite venir rencontrer les étudiants directement au cours de la dernière semaine de novembre ou en janvier, sujet à ce que l'autorisation de publier le projet de règlement soit accordée par l'Office des professions. ■

CADED meeting minutes and Constitution can be read on the LSA Website: <http://www.law.mcgill.ca/lsa/what-snew.htm>

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# To those Late Bloomers - Welcome to my Reality

by Chana Shulamit Edelstein (Law I)

To all those intellectual late bloomers of the McGill law Faculty, I have something to say to you.

I have completed 2 years of CEGEP and 3 months of law school and I have been able to pick up on a motif that many of you, coming from your exalted undergraduate, master's or upper law year level, seem to have missed. Words are extremely important, underlying intent is infinitely more so.

I am always surprised and rather disheartened at the callous attitudes and the malicious comments originating from both students and teachers. A number of kind individuals have tried to comfort me by gently welcoming me to what they called 'real life'. That comment has always made me come up with my fists,

figuratively, swinging. I will not accept something that I find distasteful and disturbing just because it is a common occurrence. I will not turn a blind eye on insensitive comments and petty articles. I will not just 'get over it'. Reality can only be what one makes of it and each person plays a part in forming the collective reality. I will take responsibility for my part in shaping the world. I invite you to do the same.

I am deeply disturbed at the presence of attitudes (unrepresentative of the whole as they may be) that can be construed as creating an atmosphere in which CEGEP students are made to feel less deserving of and less capable of effectively filling the spot they have earned. I am often accused of taking things too seriously, but I firmly believe that

wit, as weak as it may be, is often the medium through which people express their true sentiments. It is a coward's tool for it provides him/her with the ready excuse of not having 'really' meant what s/he just said. The November 23 article "From Cegep to Law School - Get Over It" seems to be engaged in some aggressive back-peddling for a previous opinion that should never have been expressed. By printing the November 9 article, "Cegep Students in Deep Conversation", the Quid Novi disrespected its own policy which purports to refuse articles on the basis of 'disparaging language', 'distasteful innuendo', 'insults', 'hurtful remarks' and the targeting of any one individual. It also warns students that the articles are read 'not only by students but by professors'. The article violated all these warnings and its authors should ►



be aware that it was, contrary to what they may like to believe, just the latest in a series of not-so-isolated instances of intolerance.

Catherine Frazee, in her talk on Disabilities and the Law, echoed a rather Orwellian sentiment. We believe in equality and human rights for all - as long as that 'all' is not too different from the rest of us.

If certain students cannot learn to respect their not so very dissimilar fellow students, no matter their educational background or writing style, I wonder how effective they will be as lawyers and law-makers. In law school, teachers seem to be telling us that a lawyer's job is to look past the mess of problems to see a label. However, they also say that if you can only see one label you will not be an effective jurist.

All we ask, as former CEGEP students but primarily as human beings, is that you make an attempt to get past your initial assumptions and give up the condescension and poorly thought-out attempts at humour. We are not just 18-19 year old CEGEP students; we are complex and interesting individuals who happen to have made it into law school. If some of us are brave enough to acknowledge our fears, those who scoff at this admission should be ashamed of themselves, particularly those students who are in a position to understand our particular apprehensions.

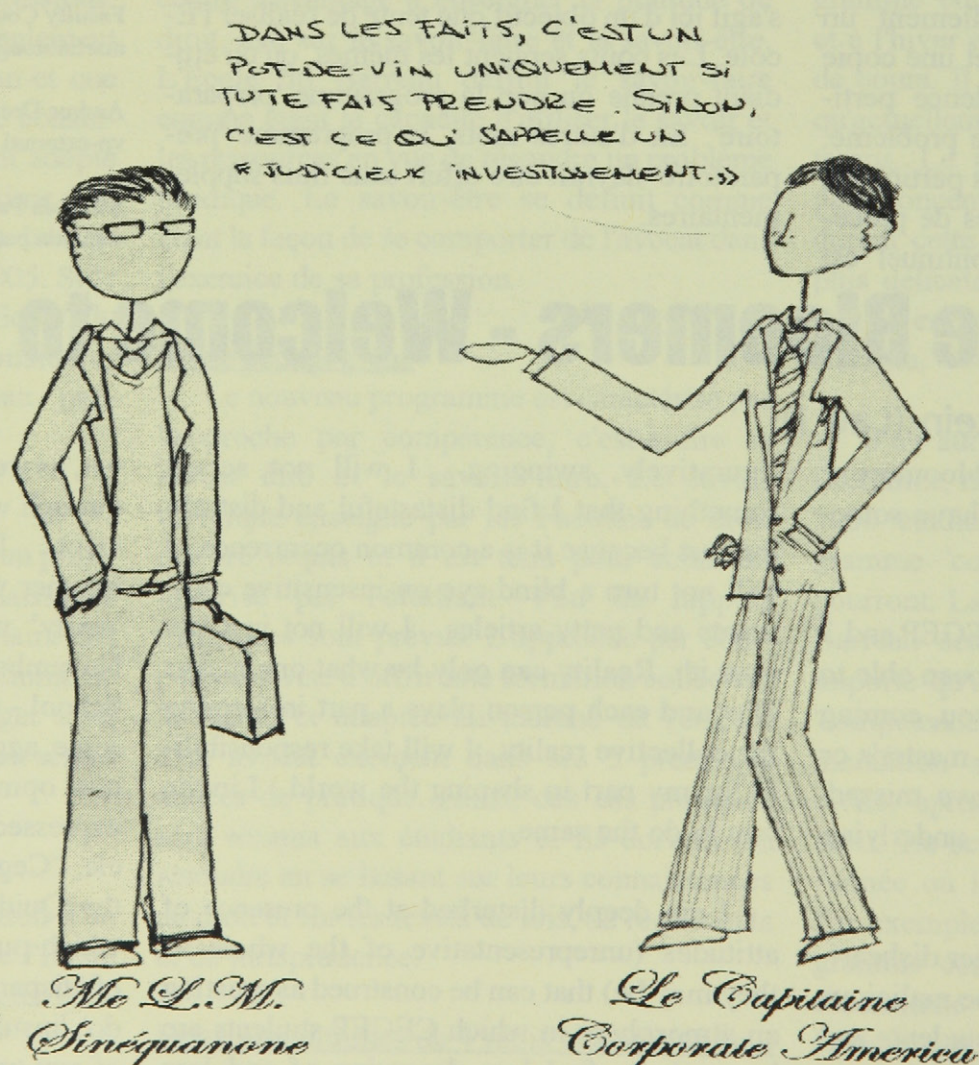
Let me remind you that differences and vulnerability are not ignored or made fun of by the founding concepts of our country. Both our Constitution and our Charter recognise that certain people must be protected from such small-minded individuals who might seek to deny them the respect that all human

beings deserve, irrespective of social, economic, religious, political or educational background. It seems that the only class some of you have attended in undergrad (or law school as the case may be) is the one in which arrogance and conceit were taught. That is one lesson I am certainly glad to have missed.

I hear so many people extolling the virtues of human rights - but it is always made in reference to some distant country, some remote culture. I would warn these individuals that if they cannot recognize a form of discrimination when it stares them in the face, I have little faith in their being able to pick up on subtle nuances of intolerance staring into someone else's face. I was under the impression that as students of law we would be fighting for these issues together, I never once thought they we would be waging those same battles within our very own faculty. ■

## Les aventures du Capitaine Corporate America: the übercapitalist you'll love to hate

by Laurence Bich-Carriere (Law I)



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